

APPENDIX A

DOCKET 13-0501 / 13-0517 (cons.) BIFURCATED ISSUES EXCEPTIONS OF AMEREN ILLINOIS COMPANY

The following are the Exceptions of Ameren Illinois Company (AIC or Company) to the Administrative Law Judges' Proposed Order (ALJPO) issued in this proceeding on May 9, 2014. The Exceptions are discussed in the accompanying Brief on Exceptions Regarding Bifurcated Issues. Appropriate replacement language for the ALJPO related to each such Exception is set forth herein in blackline format. For the reasons stated in AIC's Brief on Exceptions Regarding Bifurcated Issues, the Company asks that the ALJPO be revised to incorporate the replacement language contained in this Appendix.

Exception 1:

ALJPO SECTION II.B “Should ‘formula rate structure’ be defined to mean the approved tariff set forth in AIC’s tariffs as Rate 21 MAP-P, Tariff Sheet Nos. 16 – 16.013?” Subsection 5, “Commission Conclusion” (ALJPO pp. 18-19) should be modified as follows, as discussed in Section II of the accompanying Brief on Exceptions.

Staff recommends that the Commission define the term “formula rate structure” as the Commission-approved tariff set forth as Rate MAP-P, Tariff Sheet Nos. 16 – 16.013. Staff states that the specific schedules which would make up the formula rate structure are Schedules FR A-1 and FR A-1 REC. Staff states the Commission specifically approved the format for Schedules FR A-1 and FR A-1 REC; therefore Staff believes it is logical to conclude that only those two schedules make up the formula rate structure.

The Commission notes that AIC however, suggests that the formula rate structure should include Schedules FR A-1 and FR A-1 REC, as well as supporting Schedules FR A-2 through FR D-2, and Appendices 1 through 11 inclusive, but exclusive of the workpapers listed on 2nd Revised Sheet No. 16.006. AIC suggests that Staff’s proposed definition is contrary to Section 16-108.5 of the Act because AIC’s current Rate MAP-P Tariff does not include all components of the formula rate “structure.” AIC suggests that the formula rate “structure” is broader than Staff’s proposed “structure,” which would limit the “structure” to only FR A-1 and FR A-1 REC, and AIC believes the language of the Act makes this clear.

CUB believes that AIC’s proposed definition of “formula rate structure and protocols” is far too limiting of the Commission’s authority. CUB notes AIC would have the “structure and protocols” (which require approval under Section 9-201 of the Act) include: the formula rate tariff sheets (Schedules FR A-1 and FR A-1 REC), supporting schedules, and the appendices to those schedules. CUB suggests AIC’s proposed definition significantly restricts the Commission’s authority to review the justness and reasonableness of the proposed rates, and limits the review to little more than checking AIC’s math.

The Commission recognizes that the AG takes no position on how the term “formula rate structure” should be defined, however, the AG suggests it would be salutary for judicial efficiency if the Commission clarified the meaning of the statutory term “formula rate structure” and encouraged parties in formula rate update proceedings to eschew use of the non-legal term “formula rate template.”

~~The Commission agrees with Staff and CUB that the proposed definition of “formula rate structure” by AIC is potentially too limiting of the Commission’s ability to take reasonable actions in future annual rate update and reconciliation proceedings. The Commission declines to adopt the definition of “formula rate structure” proposed by Staff and instead confirms the definition proposed by AIC, instead, the Commission.~~

The Commission therefore finds that Staff's proposed definition of "formula rate structure" is proper and should include Schedules FR A-1 and FR A-1 REC, as well as Schedules FR A-2, FR A-3, FR A-4, FR B-1, FR C-1, FR C-2, FR C-3, FR C-4, FR D-1, FR D-2, and Appendices 1 through 11. This approach comports with the EIMA's requirement that formula rates operate in a standardized manner from year to year and the language in Section 16-108.5 distinguishing costs which are updated annually and changes to the "structure and protocols" which can only be made in a Section 9-201 proceeding. This conclusion also reflects the current practice before the Commission, and ensures the efficiency of annual formula rate update proceedings. As Staff has noted, the Commission has previously approved the format for these schedules, and to The Commission rejects the argument advanced by Staff and intervenors that to expand the "formula rate structure" definition beyond that Schedules FR A-1 and FR A-1 REC constitutes too restrictive a view of Commission authority under the EIMA. The Commission notes that it retains its authority to review any proposed changes to the "formula rate structure" in a Section 9-201 proceeding, or an investigative proceeding initiated by the Commission itself. The Act's requirements that certain procedures be used to consider modifications to the formula rate does not limit the Commission's authority to consider those modifications, when the procedural requirements are met.

The Commission also notes that it previously rejected the exact same proposal by AIC in Docket No. 12-0001 and that AIC did not request rehearing on this issue. One could argue that AIC's position in this proceeding constitutes an improper collateral attack on the Commission's previous decision. In any event, the Commission concludes that AIC has not provided a sufficient reason to deviate from the Commission's prior decision on this issue. Finally, the Commission notes that it has processed three annual update and reconciliation proceedings for both AIC and ComEd and the definition of "formula rate structure" has served the process well.

ALJPO SECTION II.D “D. Should changes to only Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing?” Subsection 5, “Commission Conclusion” (ALJPO p. 36)

AIC asserts that the EIMA’s “structure or protocols” include more than the tariff sheets, and particularly more than Schedules FR A-1 and FR A-1 REC. AIC relates that the “structure or protocols” include all the calculations that the Commission uses to “set the initial delivery services rates under the formula” in an annual proceeding. AIC believes that Staff’s and CUB’s proposal is inconsistent with the statute and not warranted. AIC objects to the AG’s proposal because it was not made in any party’s testimony, and so is not justified by the record. AIC also believes it is unnecessary.

Staff argues that since the Commission effectively approved the formats for only Schedules FRA-1 and FR A-1 REC as the formula rate structure in Docket No. 12-0001, only changes to those schedules would require approval through a Section 9-201 filing. CUB supports Staff’s position.

The AG urges that, should a party successfully propose a prudence-based adjustment to AIC’s formula rate that did not entail a change to any calculation methodology but did not obviously appear anywhere in the formula rate filing sheets, either the adjustment should be reflected in an existing line, or an “Other” line in the appropriate Schedule or Appendix should be created to accommodate the adjustment.

~~The Commission is constrained by the language in Section 16-108.5 of the Act, which does not permit the Commission to consider changes to the formula rate structure or protocols in an annual update proceeding. Given the Commission’s conclusion above, that the formula rate structure includes all of AIC’s formula rate Schedules and Appendices, the Commission must answer the question of whether changes to only Schedules FR A-1 and FR A-1 REC require approval in a Section 9-201 proceeding in the negative. Changes to the formula rate structure or protocols set forth on any of AIC’s formula rate Schedules or Appendices require approval in a Section 9-201 proceeding. In the Commission’s view, it is not possible to foresee all possible proposed changes to the support for Schedules FRA-1 and FR A-1 REC. The Commission believes it will be necessary to review any such proposed change on a case by case basis as it arises. The Commission finds it would be inappropriate to prejudge any such proposal. As noted, the Commission is constrained by the language of the Act and has no intention of entertaining frivolous proposed changes to the formula rate structure or protocols. Nevertheless, the Commission has reviewed the parties’ arguments and concludes that it can not reach a conclusion on this question at this time.~~

Exception 2:

ALJPO SECTION II.A “Should the issues raised by Staff be deferred for consideration in the ordered formula rate rulemaking?” Subsection 5, “Commission Conclusion” (ALJPO pp. 5-6) should be modified as follows, as discussed in Section II of the accompanying Brief on Exceptions.

Alternative 1 – If the Commission accepts AIC’s Exception 1:

~~Whether to address Staff’s proposals in this proceeding or await an as-of-yet uninitiated rulemaking is a threshold issue for the Commission to resolve. AIC is correct in both its recitation of prior Commission orders concerning a formula rate rulemaking and Section 10-101 of the Act. As time passes and the fourth round of formula rate proceedings begins without the prospect for a formula rate rulemaking starting, the Commission is compelled to reevaluate its earlier views on such a rulemaking. As noted, rulemakings such as the one contemplated in Docket No. 11-0721 and successor dockets typically take at least two years to complete. Therefore, it appears likely that at least six of the ten formula rate proceedings will be completed before a formula rate rule is effective. When it first called for a formula rate rulemaking proceeding, the Commission did not anticipate such a delay in its initiation. In this time of constrained State resources at many levels, the Commission now has a better appreciation of the burden imposed on Staff from the formula rate process in combination with the regular annual workload. To wait for the completion of a formula rate rulemaking to address the concerns raised by Staff in this proceeding no longer seems prudent. Consideration of Staff’s concerns in this proceeding is timely and proper.~~

However, because the Commission has rejected Staff’s proposal, and determined that it will not alter its current practice, applicable to both ComEd and AIC, of considering changes to the formula rate structure and protocols (here AIC’s formula rate Schedules and Appendices) in Section 9-201 proceedings instead of in annual update proceedings, it is not necessary to address Staff’s proposal in a rulemaking. The Commission also therefore finds it unnecessary to reach a decision here on the need for a rulemaking.

The applicability of the conclusions on these issues is another matter. Section 10-101 provides in relevant part,

Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission’s discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to.

When Ms. Ebrey raised the issues at hand, these consolidated dockets had been underway for some time and no indication was given that the outcome would be

applicable to both AIC and ComEd. Had such an outcome been contemplated at the outset, ComEd may have chosen to participate. Despite Staff's intentions reflected in Ameren Cross Ex. 1SH, the outcome of this proceeding will not be automatically applied to ComEd. Staff or another party may propose that the results of this case be applied to ComEd in an appropriate venue and the Commission will consider the record in that case before deciding whether to do so. This finding concerning the applicability of the conclusions below to ComEd does not in any way prevent the Commission from considering Staff's proposals as they relate to AIC.

Alternative 2 – If the Commission rejects AIC's Exception 1:

~~Whether to address Staff's proposals in this proceeding or await an as of yet uninitiated rulemaking is a threshold issue for the Commission to resolve. AIC is correct in both its recitation of prior Commission orders concerning a formula rate rulemaking and Section 10-101 of the Act. As time passes and the fourth round of formula rate proceedings begins without the prospect for a formula rate rulemaking starting, the Commission is compelled to reevaluate its earlier views on such a rulemaking. As noted, rulemakings such as the one contemplated in Docket No. 11-0721 and successor dockets typically take at least two years to complete. Therefore, it appears likely that at least six of the ten formula rate proceedings will be completed before a formula rate rule is effective. When it first called for a formula rate rulemaking proceeding, the Commission did not anticipate such a delay in its initiation. In this time of constrained State resources at many levels, the Commission now has a better appreciation of the burden imposed on Staff from the formula rate process in combination with the regular annual workload. To wait for the completion of a formula rate rulemaking to address the concerns raised by Staff in this proceeding no longer seems prudent. Consideration of Staff's concerns in this proceeding is timely and proper.~~

~~———The applicability of the conclusions on these issues is another matter. Section 10-101 provides in relevant part,~~

~~Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to.~~

When Ms. Ebrey raised the issues at hand, these consolidated dockets had been underway for some time and no indication was given that the outcome would be applicable to both AIC and ComEd. Had such an outcome been contemplated at the outset, ComEd may have chosen to participate. Despite Staff's intentions, as reflected in Ameren Cross Ex. 1SH, ~~was that~~ the outcome of this proceeding will not be automatically applied to ComEd. The Commission believes Staff's proposal in this case should be examined, but it is constrained by the language of Section 10-101, and cannot adopt a conclusion that would apply to ComEd without providing ComEd with

notice of that possibility at the start of the case. Therefore, in order to more fully consider Staff's proposals, the Commission reaffirms its intent, expressed in Docket 11-0721 and successor dockets, to initiate a rulemaking to consider these proposals. The Commission cannot reach a conclusion on Staff's proposals as a result of the current proceeding. ~~Staff or another party may propose that the results of this case be applied to ComEd in an appropriate venue and the Commission will consider the record in that case before deciding whether to do so. This finding concerning the applicability of the conclusions below to ComEd does not in any way prevent the Commission from considering Staff's proposals as they relate to AIG.~~